

**MINUTES
of the
SECOND MEETING
of the
COMMITTEE ON COMPACTS**

**February 28, 2015
Room 322, State Capitol
Santa Fe, New Mexico**

The second meeting of the Committee on Compacts was called to order by Senator Clemente Sanchez, chair, at 10:26 a.m. on February 28, 2015.

Present

Sen. Clemente Sanchez, Chair
Rep. Sharon Clahchischilliage, Vice Chair
Sen. Pete Campos
Rep. Zachary J. Cook
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Rep. Larry A. Larrañaga
Rep. Tim D. Lewis
Rep. Georgene Louis
Rep. James Roger Madalena
Rep. W. Ken Martinez
Sen. George K. Munoz
Sen. Cliff R. Pirtle
Sen. John C. Ryan
Sen. William E. Sharer
Sen. John Arthur Smith

Absent

Advisory Members

Sen. Carlos R. Cisneros
Sen. Lee S. Cotter
Rep. Nate Gentry
Sen. Phil A. Griego
Sen. Ron Griggs
Sen. Richard C. Martinez
Sen. Mark Moores
Sen. Mary Kay Papen
Sen. William H. Payne
Sen. John Pinto
Rep. Jane E. Powdrell-Culbert
Rep. Debbie A. Rodella
Rep. G. Andres Romero
Rep. Nick L. Salazar
Sen. Michael S. Sanchez

Rep. Alonzo Baldonado
Rep. Luciano "Lucky" Varela

Sen. Benny Shendo, Jr.
Rep. Don L. Tripp

Staff

John Yaeger, Assistant Director for Legislative Affairs, Legislative Council Service (LCS)
Peter Kovnat, Staff Attorney, LCS
Mark Edwards, Staff Attorney, LCS

Saturday, February 28

Chairman Sanchez welcomed members of the committee and the audience. Committee members introduced themselves.

The meeting opened with the governor's compact negotiating team, Jessica Hernandez, deputy chief of staff and general counsel, Office of the Governor, and Wade Jackson, general counsel, Economic Development Department, answering a holdover question. Ms. Hernandez said that the pueblos of Jemez and Zuni had their gaming compacts denied by the Department of the Interior (DOI) because of technical issues. For example, the compact was called an amended compact when there was no earlier compact to amend, and it contemplated predecessor agreements that did not exist vis-à-vis those two pueblos. This was after the DOI approved the 2007 compact for other new-to-gaming tribes. So, Ms. Hernandez said, the denials were for technical reasons and differed from what the DOI had done in the past.

In response to a question, Ms. Hernandez gave a brief description of the ongoing issues regarding gaming at the Pueblo of Pojoaque. She explained that the state sued the DOI and won over secretarial procedures and the imposition of a not-negotiated compact. Both the Pueblo of Pojoaque and the DOI have appealed that decision to the Tenth Circuit Court of Appeals.

Turning back to the 2015 compact, a committee member asked what activities would cause revenue sharing to cease. According to Section 11 of the 2015 compact, a tribe's obligation to continue revenue sharing terminates if the state allows any person or entity, other than six licensed horse racetracks and veterans and fraternal organizations, to operate gaming machines, allows the person or entity to operate more than 750 machines or allows the person or entity to operate for longer hours. The state lottery is also permitted.

Chairman Sanchez thanked the governor's negotiating team and asked to hear testimony from the tribal representatives, first from those involved in the negotiations that led to this compact and then from any other person who wished to speak.

LoRenzo Bates, speaker of the Navajo Nation Council, and Karis Begaye, attorney, Navajo Nation Department of Justice, spoke on behalf of the Navajo Nation. Speaker Bates said that the nation is pleased to be united with the four other tribes and the state in coming forward with this compact. He said that the compact is fair and reasonable and will continue to benefit all with revenue, jobs and opportunity. He said that it is imperative that this compact be signed, and that more than 1,000 jobs, primarily jobs for Navajo employees, are at stake. Speaker Bates said

that after an unsuccessful attempt in 2014 to get a compact approved, the Navajo Nation incorporated some suggestions made by the committee last year and also worked to include other tribes. He said that the nation agreed to have fewer facilities, despite that being an important issue, and this represents a huge concession on the Navajo Nation's part. Speaker Bates said that this was done in order to get this compact finalized.

DIn response to a question, Speaker Bates said he is aware of the racinos' concerns, but the Navajo Nation is facing a shutdown of its gaming operations if this compact does not go into effect, and that essentially means a government shutdown for the nation. He said that legislation, and not the compact, is how to deal with parity for racinos. He added that the committee should respect the terms that have been reached and not request any changes because that will only delay the process and put the Navajo Nation at risk. Speaker Bates confirmed that the Navajo Nation would support legislation providing more favorable terms to the racinos, provided that the racinos do not oppose the 2015 compact. When a legislator asked about a certain provision that the legislator felt excluded the Fort Sill Apache Tribe, Speaker Bates said that was a negotiated point that was not of critical importance to the nation.

A legislator asked if the compact includes provisions for changing its terms in the event that the economy changes for the worse. Speaker Bates replied that revenue sharing is set out in tiers, so that if revenues drop below a certain point, so will the revenue sharing amount owed to the state. Currently, he said, gaming on the Navajo Nation directly contributes \$8 million a year to the state.

AA concern was raised that the Pueblo of Zuni would be unable to sign on to this compact. Ms. Hernandez said, if approved, any New Mexico tribe could sign on to this compact and, pending approval by the DOI, game on land held in trust by the tribe prior to October 1988.

Dion KILLSBACK, representing the Jicarilla Apache Nation, presented before the committee. He said that President Ty Vicenti sends his regards and gave a short history of the tribe. He noted that the Jicarilla Apache Nation provides more than 200 jobs and millions of dollars in severance taxes, gross receipts taxes and revenue sharing to the state. Mr. KILLSBACK asked the committee to send the compact to the full legislature with no changes. When asked about specific aspects of the 2015 compact, Mr. KILLSBACK said that the compact was a result of negotiations among a number of parties and that to change one thing would risk a number of aspects of the agreement.

Conroy Chino, tribal member, Pueblo of Acoma, and Peter Chestnut, attorney for the Pueblo of Acoma, presented next. Mr. Chestnut read a statement from Governor Fred Vallo (see handout). When asked about the language that appears to exclude Fort Sill, Mr. Chestnut said that it mattered to some other negotiating parties, and because it does not impact any currently gaming tribe and because it is important to the Pueblo of Acoma to ensure that its gaming operations continue, the pueblo agreed to that provision.

Mr. Chestnut also explained that the Pueblo of Acoma carries liability insurance for the entire casino and hotel, and that, pursuant to the compact, there is a limited waiver of sovereign immunity for certain occurrences.

When the discussion returned to the issue of Fort Sill, Ms. Hernandez said that there is a provision that has been used by a number of tribes to permit off-reservation gaming in other states. She said that this state has consistently been opposed to off-reservation gaming, and each tribe negotiating for this compact was asked if it intends to use the after-acquired land exceptions in the federal Indian Gaming Regulatory Act (IGRA). The tribes said they did not, so this language was included in the 2015 compact. Ms. Hernandez clarified that this compact does not prohibit gaming at Fort Sill in the future; that would require a different compact. She said that once Fort Sill has federally approved land for gaming in the state, it can negotiate a compact.

When asked if the Pueblo of Acoma would support legislation providing more favorable gaming conditions for the racinos, Mr. Chestnut said that the pueblo would have to see the legislation before commenting.

Representatives from the Mescalero Apache Tribe, President Danny Breuninger and John Wheeler, general counsel, spoke next. Mr. Wheeler said that the provision being discussed is not aimed at Fort Sill and that the after-acquired land policy reflects the IGRA. The reasoning behind that provision is that the purpose of Indian gaming is to provide tribes with the wherewithal to provide for their members. Because social services are not provided on after-acquired land, which, presumably, is not populated by tribal members, different considerations have to be taken regarding that land.

President Breuninger said that business at the Mescalero facility, a resort destination, is seasonal. He also said that the tribe would have to see the racino legislation before commenting. When asked about a provision in the 2015 compact that allows credit to be extended, provided it exceeds \$10,000 and the borrower meets certain income and available balance thresholds, Mr. Wheeler said that it was a result of months of detailed negotiation. The parties looked at how this issue is addressed in other compacts, and keeping in mind the safety of patrons, included that provision, which reflects a balance of sufficient consumer protections while making the resort attractive to high rollers.

An issue of concern to a number of members is the protection of third parties. Under the 2015 compact, if a person who did not visit the casino is hurt by a person who was overserved alcohol there, the casino would not be liable. Mr. Wheeler said that per the IGRA, issues in compacts must have a nexus to gaming. The 2015 compact does that by linking liability to casino visitors. To expand the definition of "visitor" to extend beyond casino visitors, and thus the nexus to gaming, could jeopardize the DOI's approval of the compact.

Pueblo of Jemez Governor Raymond Loretto and the pueblo's attorney, David Yepa, addressed the committee. When asked about off-reservation or after-acquired gaming, Mr. Yepa said that the pueblo agrees with related provisions in the 2015 compact and that it withdrew its earlier attempts to build a casino in Anthony, New Mexico.

Next, the committee heard testimony from other tribes in the state. David Martinez, first lieutenant governor, Pueblo of Laguna, read a statement from the pueblo (see handout). A committee member said that the Pueblo of Laguna should be concerned that the Navajo Nation could build a new casino in the Albuquerque market, which the member considers saturated. Another member said that the Pueblo of Laguna already has three gaming facilities.

James Rivera, tribal member, Pueblo of Pojoaque, said that the pueblo does not have a position on the 2015 compact. However, he said that at the February 24, 2015 Committee on Compacts meeting, Ms. Hernandez made an inaccurate statement when she said that the Pueblo of Pojoaque is seeking a benefit over other tribes. He said the pueblo just wants a compact that is consistent with the IGRA and that the state may only ask for money from tribal gaming to cover specific things. Mr. Rivera said that the Pueblo of Pojoaque will not stand in the way of another sovereign government if it chooses to have its gaming revenue go into the New Mexico state treasury.

Mr. Rivera said that the Pueblo of Pojoaque is too small to grow economically in any other way and that gaming is a way to protect the pueblo's way of life. He said that the pueblo was asked not to go through the federal process, but the state offered nothing, so it did go that route. Mr. Rivera closed by saying that after-acquired land is about reclaiming traditional tribal land.

The Fort Sill Apache Tribe, represented by Chairman Jeff Haozous and attorney Joel Davis, briefly retold the tribe's history, how tribal members were removed from New Mexico, almost perished and are now trying to recover their land and heritage. Chairman Haozous asked the committee to send this compact back and tell them to do the right thing and not exclude Fort Sill. A member made an appeal to all tribes to be understanding. For example, the people of the Pueblo of Jemez came from Pecos and were relocated, yet Terrero continues to be sacred to them. Returning to ancestral homes is something that all natives can or should understand. Another legislator responded that there is nothing preventing people from the Pueblo of Jemez from moving back to Pecos, or Fort Sill members from moving to Akela Flats. The legislator said that this is about gaming, not about moving back to ancestral lands.

Ron Plato, representing Ohkay Owingeh, spoke in support of the 2015 compact, its revenue share and the lower regulatory fees. Dave Milkey, representing the Pueblo of Isleta, raised a concern about the 2015 compact's sixth recital, which says that the tribe has negotiated with the state. The 2007 tribes did not negotiate the 2015 compact and there is a concern that the DOI might not approve those tribes signing on to the 2015 compact based on this technicality. Ms. Hernandez said that she believes the DOI would approve the 2015 compact for the 2007 tribes and that the pueblos of Zuni and Jemez situation was unique and unlikely to recur.

Governor Milton Herrera, Charlie Dorame, Maxine Velasquez and Richard Frias spoke on behalf of the Pueblo of Tesuque. They urged the committee not to ignore history. The racinos were allowed to exist to save the horse racing industry, despite the conflict it created as far as providing exclusivity to Indian gaming. It would be wrong to forget that now and try to

create equity between private companies for the benefit of their owners and tribal governments that provide services to their members and the local community. The Pueblo of Tesuque also objects to the population-based size requirements set forth in the 2015 compact. Ms. Velasquez said that if the 2015 compact goes into effect, and the 2007 tribes are not allowed to sign on based on the sixth recital technicality, the 2007 gaming tribes will be at a competitive disadvantage.

Chairman Sanchez then opened up the meeting to public comment. David Jaramillo, New Mexico Trial Lawyers Association, reiterated the third-party liability issue and said the intention is to make a discrete fix to address a specific problem, and not to open the floodgates to undo tribal judicial sovereignty. Allison Smith, New Mexico Restaurant Association, raised a concern about the comps allowed by the 2015 compact, but supported the effort to bring in out-of-state visitors.

Leonard Tsosie and Jonathan Nez, Navajo Nation, urged the committee to act on behalf of all 300,000 members of the Navajo Nation. Bob Haozous, Chine Nde Warm Springs Apache tribal member, said that the tribal members taken to Oklahoma acclimated and stayed there, but some always wanted to come back. He said the Fort Sill Apache Tribe just seeks parity and the right to develop economically. He said it does not want anything extra, just a level playing field. Emily Haozous, professor at the University of New Mexico College of Nursing and Warm Springs Chiricahua Apache tribal member, said that the Fort Sill-related language in the 2015 compact is discrimination and cannot be supported.

Next, Chairman Sanchez entertained motions for requests for renegotiation from members of the committee.

#1 - Request H - A motion to respectfully request renegotiation to delete the requirement that a tribe have 75,000 registered members to operate an additional gaming facility. By a vote of 12 to 4, the motion failed. The no votes were from Senators Campos, Munoz, Pirtle, Ryan and Sharer; and Representatives Clahchischillie, Cook, Johnson, Lewis, Louis, Madalena and Martinez.

#2 - Request I - A motion to respectfully request renegotiation to make the delay to add an additional gaming facility from six to 10 years. By a vote of 14 to 2, the motion failed. The no votes were from Senators Campos, Munoz, Pirtle, Ryan, Sharer and Smith; and Representatives Clahchischillie, Cook, Johnson, Larrañaga, Lewis, Louis, Madalena and Martinez.

#3 - Request G - A motion to respectfully request renegotiation to treat third parties as visitors. By a vote of 12 to 3, the motion failed. The no votes were from Senators Sanchez, Campos, Munoz, Ryan and Sharer; and Representatives Clahchischillie, Cook, Johnson, Larrañaga, Lewis, Louis and Madalena.

#4 - Request N - A motion to respectfully request renegotiation to not allow a tribe to extend credit to the tribe's own enrolled members. By a vote of 12 to 4, the motion failed. The

no votes were from Senators Sanchez, Campos, Ingle, Pirtle, Ryan and Sharer; and Representatives Clahchischilliage, Cook, Johnson, Lewis, Louis and Madalena.

#5 - Request M - A motion to respectfully request renegotiation to remove the prohibition on the IGRA exceptions to gaming on after-acquired land. By a vote of 9 to 7, the motion failed. The no votes were from Senators Campos, Ingle, Pirtle, Ryan and Sharer; and Representatives Clahchischilliage, Cook, Johnson and Lewis.

#6 - Request C - A motion to respectfully request renegotiation to have financial statements sent to the state treasurer. After discussion, the motion was withdrawn.

#7 - Request A - A motion to respectfully request reconsideration of issues raised by the 2007 gaming tribes. By a vote of 9 to 7, the motion failed. The no votes were from Senators Campos and Sharer; and Representatives Clahchischilliage, Cook, Johnson, Larrañaga, Lewis, Louis and Madalena.

All the motions requesting renegotiation having failed, Chairman Sanchez held a vote for a recommendation to send the 2015 compact to the floor with the committee's recommendation. By a vote of 15 to 1, the motion passed. The no vote was from Senator Smith.

There being no further business before the committee, the committee adjourned at 7:00 p.m.